BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.
ON NOTICE OF PROPOSED RULEMAKING

Daniel M. Waggoner
Suzanne Toller
Gregory Kopta
Jane Whang
Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101
Tel.: (206) 622-3150
Fax: (206) 628-7699

Douglas I. Brandon
Vice President – Legal and External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W., 4th Floor
Washington, DC 20036
Tel. (202) 223-9222

Attorneys for AT&T Wireless Services, Inc.

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EXECUTIVE SUMMARY

The record fully supports the Commission's proposal in this Notice of Proposed Rulemaking ("NPRM") to adopt a system of bill and keep for all intercarrier compensation. As AT&T Wireless Services, Inc. ("AWS") and many parties noted in opening comments, bill and keep promotes efficiency, competition, and technological neutrality. Moreover, there is no question that the Commission has plenary authority under 47 U.S.C. §§ 332, 251, and 252 to adopt bill and keep for the exchange of all commercial mobile radio service ("CMRS") traffic and that a bill and keep structure is particularly justified for CMRS traffic.

Although some parties assert that the existing system of compensation is necessary to protect rates and current subsidies, these arguments are unconvincing. On the whole, bill and keep is a simpler, and more efficient and pro-competitive system than the current "calling party's network pays" regime. Accordingly, AWS proposes that the Commission adopt a bill and keep system for local traffic currently subject to Section 251(b)(5), in which both the LEC and the interconnecting carrier equally share in the cost of transport and interconnection facilities between networks, and in which the interconnecting carrier may choose its points of interconnection, as well as the point of interconnection to which traffic should be sent by the originating carrier. If the Commission declines to adopt bill and keep for all forms of intercarrier compensation, AWS strongly urges the Commission to adopt, at a minimum, bill and keep for CMRS-ILEC traffic, including traffic between MTAs. This is particularly appropriate given the many inequities, inefficiencies, and inconsistencies that exist under the current intercarrier compensation scheme for CMRS traffic, and the fact that problems identified generally by commenters opposing bill and keep do not apply to CMRS-ILEC interconnection. Similarly, bill and keep for CMRS traffic that is subject to access charges is the best method for addressing current inefficiencies and arbitrage opportunities that exist under the current system.

In the event that the Commission determines not to adopt bill and keep for all intercarrier compensation, or, at a minimum for CMRS-LEC traffic, AWS urges the Commission to address certain abuses existing under the current "calling party's network pays" regime, particularly as they affect CMRS providers. Specifically, the Commission should eliminate abuses by some rural ILECs regarding transit traffic by reaffirming that all traffic within the MTA is local, even where multiple carriers are involved in completion of calls and indirect interconnection is employed. The Commission should address the costs of physical interconnection, and points of interconnection, by (1) reaffirming its single "point of interconnection" rule; (2) adopting AWS' proposal for a system in which costs of transport and physical interconnection are shared equally between the interconnecting carriers; and (3) requiring the originating carrier to send traffic to the point of interconnection designated by the terminating carrier. Further, the Commission should continue to permit current use of virtual NXXs or, at a minimum, continue to allow use of virtual NXXs for CMRS providers because of the unique and mobile nature of CMRS calls. The Commission should also reaffirm TELRIC-requirements with the presumption of symmetrical rates; and the tandem-switch rule. Finally, AWS urges the Commission to reaffirm that CMRS providers are entitled to the same rights that CLECs have under the Sections 251 and 252 of the Telecommunications Act of 1996 ("Act").

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I. INTRODUCTION

The opening round of comments in this proceeding demonstrates both the wide variation in the interests of the commenters and the large economic stakes. Yet, from this diverse array, several points emerge undisputed. First, Sections 332, 251 and 252 together give the Commission broad, nationwide authority to set pricing rules for traffic exchanged by commercial mobile radio service ("CMRS") providers. AT&T Wireless Services, Inc. ("AWS") urges the Commission to employ this authority to order bill and keep for all CMRS-ILEC traffic.

Second, there are many costs, inefficiencies and arbitrage opportunities created by the existing patchwork of interstate and intrastate access charges, reciprocal compensation and Internet service provider ("ISP") traffic arrangements. While many commenters protest the loss of existing subsidies or advantages, none denies that the existing system is complex and often contrary to the public interest. The cries that the sky is falling always will be heard, but the Commission should take action now to move toward a unified regime that eliminates costs, inefficiencies and opportunities for arbitrage.

Finally, the record is clear that, even if the Commission does not adopt a fully unified regime, it should nonetheless address a variety of problems in the existing regulatory scheme.

For CMRS providers like AWS, major concerns are the one-sided application of the access charge regime to CMRS providers and the abuse by rural ILECs that seek to avoid application of the Commission's reciprocal compensation rules. For all carriers, the rules for sharing the costs of transport between networks and avoiding unnecessary points of interconnection require clarification and affirmation. By taking these actions, the Commission will minimize intercarrier costs and inefficiencies and serve the public interest, even without a fully unified regime.

II. THE LEGAL FRAMEWORK

A. There Is No Dispute That the Commission Has Broad Authority over CMRS-ILEC Interconnection

The parties who comment on the scope of the Commission's jurisdiction over CMRS-ILEC interconnection generally agree with AWS that Section 332 provides an independent basis of Commission jurisdiction over CMRS-ILEC interconnection which is more comprehensive than its authority over other carrier interconnection provided by Sections 251 and 252.[1] Citing the savings clause in Section 251(i), the Eighth Circuit Court of Appeals decision in *Iowa Board Utilities* and the recent D.C. Circuit Court of Appeals decision in *Qwest v. FCC,* these parties agree that the Commission has authority under Section 332 to adopt national rules of "special concern to wireless carriers" including rates for termination.[2] They also agree that Section 332 gives the Commission authority to preempt the states under Sections 251 and 252.[3]

[1] AWS comments at 16-19; Triton comments at 3–5; Rural Telecommunications Group ("RTG") comments at 2 ("Section 332…clearly establishes the Commission's exclusive, plenary jurisdiction over CMRS-ILEC interconnection agreements"), 6; Verizon Wireless comments at 6; Personal Communications Industry Association ("PCIA") comments at 37; Allied comments at 7-8; Voicestream comments at 4-5, 14-15; Cellular Telecommunications & Internet Association ("CTIA") comments at 3-15; Nextel comments at 6-9. One dissenting voice is the California Public Utilities Commission ("PUC"), which, despite the Eighth Circuit Court of Appeals decision in *Iowa Utilities Board,* the Supreme Court decision in *AT&T v. Iowa Utilities Board*, and the D.C. Circuit Court of Appeals decision in *Qwest v. FCC* maintains that the Commission's jurisdiction over CMRS-ILEC interconnection is limited to interstate matters. California comments at 9. This isolated view cannot stand in the face of the unequivocal holdings of the courts.

[2] *See*, *e.g.*, CTIA comments at 3-14.

[3] *See, e.g.*, RTG comments at 2; CTIA comments at 10-12.

There are only two disagreements among these commenters: (i) whether the Commission is required, as a legal matter, to give force and effect to Sections 251 and 252 when addressing CMRS–ILEC interconnection; and (ii) how, as a practical matter, the Commission should administer the CMRS-ILEC interconnection approval process.

1. The Commission Must Comply with the Substantive Provisions of Sections 251 and 252 in Crafting Rules for CMRS-ILEC Interconnection

Allied correctly argues that the Commission's authority under Section 332 does not go so far as to permit the Commission to ignore the mandates of Sections 251 and 252 in adopting rules for CMRS-ILEC interconnection. As Allied explains:

> [t]he better view, [consistent] with the usual standards of statutory interpretation, is that absent an express provision, or a direct conflict in terms, Sections 251-52 should not be held to have superceded Section 332(c). Instead the 1996 Act supplements previous legislation. This means that the Commission may issue uniform CMRS-specific rules, provided such rules may not be substantively inconsistent with Sections 251-52.[4]

Although some parties contend that the Commission can use its plenary jurisdiction under Section 332 without regard to Sections 251 and 252,[5] they do not contest that CMRS providers

[4] Allied Personal Communications Industry Association of California ("Allied") comments at 7; *see also* Verizon Wireless comments at 10 ("considerable overlap exists between the Commission's Section 332 jurisdiction and its authority under Sections 251 and 252"); PCIA comments at 39-40 ("the Commission should adopt a federal nationwide interconnection regime for LEC-CMRS interconnection pursuant to Sections 201 and 332 of the Act and consistent with substantive protections accorded all telecommunications carriers under Section 251 and 252 of the Act").

[5] CTIA comments at 4 ("Sections 251 and 252 do not limit the Commission's exercise of its Section 332 authority"); Voicestream comments at 14 ("whatever limitations Section 252(d) may impose on the Commission's ability to impose mandatory bill-and-keep for LEC-LEC interconnection, this limitation has no relevance to the Commission's authority to impose bill-and-keep for LEC-CMRS interconnection"); Triton at 5 ("[a]mong other things, it [the fact that the Commission is not limited by the provisions of Sections 251 and 252] means that the Commission's concerns about the lawfulness of adopting a bill-and-keep regime under Sections 251 and 252 do not apply to terms, procedures or process used to achieve CMRS-LEC interconnection arrangements.").

are telecommunications carriers, nor do they offer any compelling arguments that would justify how the Commission could ignore the later enacted statutes.[6]

Indeed it is clear that the Commission must give force and effect to both statutes. As Verizon Wireless explains, "[s]ection 332 gives [the Commission] authority to determine *how* the principle of reciprocal compensation contained in Sections 251 and 252 of the Act should apply to LEC-CMRS traffic."[7] This dual Section 332 – 251/252 statutory scheme provides the Commission with the necessary flexibility, where appropriate and consistent with the substantive terms of Sections 251 and 252, to adopt rules tailored for wireless carriers taking into account unique facts about wireless networks (*e.g.*, different calling patterns, delivery technologies, local calling areas, price schemes, costs).[8] As is explained in detail below, this analysis demonstrates that bill and keep is appropriate for CMRS-ILEC interconnection.

2. The Commission Should Establish a Nationwide Uniform Scheme for CMRS-ILEC Interconnection

All the parties who address this issue urge the Commission to establish a "nationwide uniform scheme" for CMRS-ILEC interconnection, consistent with Congress' intent.[9] As one commenter noted:

> Congress deliberately chose a 'federal regulatory framework' for all CMRS. It specifically directed the Commission to 'promote' LEC-CMRS interconnection because such interconnection 'serves to enhance competition and advance a seamless national network.'[10]

[6] For example, in its comments, CTIA appears to assert that the Commission can simply proceed under its separate Section 332 authority without regard to the later enacted statute. CTIA comments at 3-4.

[7] Verizon Wireless comments at 11 (emphasis added).

[8] Verizon Wireless comments at 14.

[9] *E.g.*, AWS comments at 18; PCIA at 37; Voicestream comments at 4-5; CTIA comments at 5; Nextel comments at 8.

[10] Voicestream at 2 (citations omitted); see also RTG comments at 2 ("It is imperative that CMRS providers who typically operate across state lines, have a single source of consistent compensation/interconnection direction. Congress determined that the Commission would be that source.").

Parties assert that the current system is inefficient and burdensome[11] and that a number of benefits would flow from increased federal oversight.[12]

Carriers offer a variety of frameworks for the "nationwide uniform scheme," ranging from complete preemption of the states to more active Commission oversight over the current process.[13] For example, Voicestream proposes that all CMRS-ILEC interconnection agreements be filed with the Commission and that the Commission assume exclusive jurisdiction over the process.[14] Other carriers suggest a more moderate approach. Rather than preempt the role of the states entirely, Verizon Wireless proposes that the Commission adopt clear, uniform rules regarding CMRS-ILEC interconnection that states must apply consistently. Verizon Wireless posits that the advantage of this approach is that it preserves the role of the states while minimizing the potential for disputes.[15] Alternatively, PCIA proposes that CMRS providers be given the choice of going to the Commission or the relevant state commission for relief.[16]

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[11] *See*, *e.g.*, Voicestream comments at 5-8 (describing the burden of filing agreement in 44 states, arbitrating the same issues in multiple states and being subject to inconsistent state rulings); Verizon Wireless comments at 9 (expressing concern about the regulatory patchwork of state based interconnection rights and obligations); Nextel comments at 9 (complaining about state commissions that propagate unreasonable interconnection service arrangements and bias towards the ILECs); Triton comments at 6-7 (citing inconsistent state regulation and widely varying interconnection rates); PCIA comments at 37-38; AWS comments at 21. Voicestream also argues that the current system suffers from a substantial jurisdictional defect since the states are prohibited from setting rates for CMRS providers under Section 332. Although this jurisdictional defect has largely been avoided, Voicestream warns that this issue will need to be confronted as additional carriers move to establish their higher call termination rates. Voicestream comments at 5-6, citing Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, and Dorothy T. Attwood Chief, Common Carrier Bureau, to Charles McKee, Sprint PCS, DA 01-1201 (May 9, 2001).

[12] Voicestream comments at 9-10; PCIA comments at 37-38; Triton comments at 2. The benefits cited include a reduction in transaction costs, enhanced access to interconnection agreements, a reduction in states' workload, facilitation of uniform decision-making and reduction in ILEC influence over the state commissions.

[13] Significantly, however, even the carriers who advocate a continued role for the states agree that the Commission has the power to preempt the states if it wishes. *See*, *e.g.*, PCIA comments at 38; AWS comments at 118-19.

[14] Voicestream comments at 9; RTG comments at 5; *see also* Nextel comments at 9.

[15] Verizon Wireless comments at 10.

[16] PCIA comments at 38-39 (with the Commission relying on its default arbitration rules (47 CFR Section 51, subpart I) and disputes between ILECs and CMRS providers being resolved under the Commission's Section 208 complaint process).

As AWS stated in its opening comments, although AWS prefers a more uniform national approach, it believes a dual state/federal Section 252 process can help maintain consistency in the approval process for all interconnection agreements. Even with a state approval process, however, the Commission should set nationwide, binding rules that the states must follow. At the same time, the Commission should provide an alternative forum for disputes between CMRS providers and ILECs, *i.e.*, via declaratory rulings or complaints, to resolve issues with national import or where state forums are unworkable.

B. The Commission Has Authority under Section 252(d) to Adopt Bill and Keep for Local Traffic

Most of the commenters who address the issue do not dispute that after the Supreme Court's decision in *AT&T v. Iowa Utilities Board,* the Commission has jurisdiction to adopt "bill and keep," so long as bill and keep provides for the mutual and reciprocal recovery of costs under Section 252(d).[17] A few parties (although significantly not the state commenters)[18] incorrectly argue that the Commission's establishment of bill and keep would impermissibly eliminate states' rate-setting role, which was upheld by the Supreme Court in *AT&T v. Iowa Utilities Board*.[19]

In *AT&T v. Iowa Utilities Board*, the Supreme Court found that Section 201, without regard to authority otherwise granted to the Commission under Section 251, "*explicitly* gives the

[17] *E.g.*, Qwest comments at 40-44; SBC comments at 40-41; Sprint comments at 19-21; *see also* Comptel comments at 22; Time Warner comments at 27-28.

[18] *See*, *e.g.*, California comments at 4 ("California is not opposed to the use of bill-and-keep compensation for the transport and termination of local traffic and calls to ISPs as a general proposition. However, in order to provide proper pricing signals , the FCC may wish to consider modifying the application of bill-and-keep in those instances when traffic is not in balance."); Texas comments at 114-5 (bill and keep is appropriate only if traffic is approximately in balance); Alaska comments at 7 (arguing that while the FCC "may" preempt state control over intrastate local carrier interconnection agreements, state commissions are better positioned to make well-informed decisions). Instead most states focused their jurisdictional challenges on the Commission's authority over intrastate access charges and asked that the Commission refer the NPRM issues to the separations and joint universal service boards. *See*, *e.g.*, NARUC comments at 3-5; Florida comments at 5-6; Missouri comments at 3.

FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[20] In particular, the Court upheld the Commission's authority to determine proxy rates and establish pricing regimes for all traffic subject to Sections 251 and 252 of the Act.[21] The Commission's adoption of bill and keep would intrude no more on the states' jurisdiction than does the current regime affirmed in *AT&T v. Iowa Utilities Board*.[22] The Commission already adopted cost recovery rules for local traffic; bill and keep is just a different type of cost recovery rule.[23] Under a new cost recovery rule, states would retain a role in setting rates, but that role would be to review end user rates, not the rates that carriers pay each other.[24]

The parties who assert that bill and keep satisfies the test of Section 252(d) – the mutual and reciprocal recovery of costs – demonstrate that the legislative history and the statute itself expressly permit bill and keep arrangements; that 252(d) requires compensation only for "a reasonable approximation of the additional costs of terminating such calls"; and that carriers can recover any additional costs from their end users.[25] While those who claim that bill and keep does not satisfy the Section 252(d) criteria advance a number of arguments to support their argument, none are persuasive.

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[19] National Telephone Cooperative Association ("NTCA") at 4 (also argues that bill & keep violates Section 254); Allegiance comments at 38; Focal *et al*. comments at 33.

[20] *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 384-386 (1999) (emphasis added).

[21] *Id*.

[22] SBC comments at 40.

[23] *Id.*

[24] *See* SBC comments at 43-48; Qwest comments at 41-44; Bell South comments at 20-26; AWS comments at 22-24; California comments at 5 (noting that even if the FCC adopts bill-and keep, the state retain jurisdiction to set local rates.)

[25] AWS comments at 22-24; Sprint comments at 19-20; Qwest comments at 40-44; SBC comments at 43-46.

A number of commenters claim that Section 252(d)'s "mutual and reciprocal cost recovery" requirement is not met when traffic is not balanced.[26] Section 252(d), however, does not require that traffic be balanced, but rather only that there be mutual recovery of a "reasonable approximation of the additional costs of terminating such calls." 47 CFR §252(d)(2)(A)(ii).[27] In considering whether there is such mutual recovery, the Commission must, in addition to considering the balance of traffic, also consider factors such as peak loading and cost imbalances. As Qwest asserts:

> In this context, the term "additional costs," which appears nowhere else in sections 251 and 252, could reasonably be construed to include only the short-run (per-call) incremental costs of delivering traffic to the called party. *Those* costs may well be negligible, because, as discussed above, individual calls do not typically "cause" transport and termination costs; those costs consist instead of the lumpy investments needed to ensure peak load capacity. For that reason alone, bill and keep proposals such as DeGraba's, which effectively set the termination rate at zero, are consistent with Section 252(d)(2).[28]

In the CMRS-ILEC context in particular, the tendency toward traffic balance, coupled with the higher costs of CMRS providers' networks for termination of traffic and asymmetry in peak times, mean that mutual and reciprocal recovery of costs is achieved by "bill and keep."[29]

Parties opposed to bill and keep also argue that Section 252(d) requirements cannot be satisfied by the recovery of costs from end users.[30] The Act does not require that carriers must

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[26] Focal *et al*. comments at 31; Comptel comments at 23; Time Warner comments at 27; Allegiance comments at 36.

[27] *See also* SBC comments at 45 (Commission authority not limited to situation where traffic is balanced; section 252 (d) refers to offsetting obligations, not payments); Bell South comments at 25 ("the 'balanced traffic' predicate for bill-and-keep reciprocal compensation is not a statutory mandate, but rather a Commission limitation…in the *Local Competition Order*").

[28] Qwest comments at 42; *see also* CTIA comments at 26 ("the relevant costs are not determined by looking only to the respective traffic flows, but rather by examining the amount of traffic delivered for termination to a carrier during its peak busy hour along with the cost of providing that peak capacity"); WorldCom comments at 19 (bill and keep would be appropriate for out-of-balance traffic if termination costs are usage insensitive).

[29] AWS comments at 22-23, 31-33; CTIA comments at 26-28.

recover costs that are not "equally offset" from other carriers. In fact, as Sprint correctly points out, carriers today are already recovering a large percentage of their costs from their own end users, including those costs for calls that both originate and terminate on their own networks:

> There would seem to be no reason why the cost of terminating a call which originated on the network of another carrier should be higher than the cost of terminating a call which originated on the same network. Thus, to the extent that a carrier is able to recover from its end user customers the costs of terminating calls that originate over its own network, the carrier should be equally able to recover from its end user customers the costs of terminating calls that originated on another carrier's network. In view of the near ubiquity of flat-rate local pricing, there is no reason to assume carriers cannot be fully compensated from retail rates for the costs of the services they provide (including terminating calls, whether those calls were originated on their own networks or on networks of other carriers).[31]

Finally, some parties argue that bill and keep can only be agreed to on a voluntary basis;[32] however, this argument is fundamentally flawed. If this argument were correct, then the current Commission rule allowing states to mandate bill and keep would be similarly invalid; yet the Supreme Court has expressly affirmed that the Commission has the right to establish bill and keep.[33]

C. The Commission Has Jurisdiction to Impose Bill and Keep for Access Charge Traffic

At the outset, AWS agrees with commenters[34] that the Commission has jurisdiction to impose bill and keep on both interstate and intrastate access charge traffic and urges the

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[30] *See*, *e.g.*, AT&T comments at 39.

[31] Sprint comments at 20.

[32] *See* Allegiance comments at 38 ("[t]he only situation in which bill-and-keep arrangements should be allowed where traffic is not balanced is when the parties voluntarily agree to such an arrangements"); Focal *et al*. comments at 32 (citing to the language in Section 252(d)(2)(B)(i) regarding "agreements that *waive* mutual recovery").

[33] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 384-386.

[34] BellSouth comments at 17-19 (interstate access charge authority) and 26-28 (intrastate access charge authority); SBC comments at 38.

Commission to affirm its commitment to a unified compensation scheme, in which all traffic is subject to bill and keep. A unified intercarrier compensation system that applies to all carriers will serve to minimize market distortions and inequities that result from applying different compensation methods to similar relationships.

1. The Commission Has Jurisdiction to Apply Bill and Keep for Interstate Access Charges

The Commission unquestionably has jurisdiction over interstate access charges.[35] The Commission has long exercised jurisdictional authority over interstate exchange and information access services under Section 201.[36] Despite the Commission's well-established authority over interstate access charges, several commenters contend that the Commission does not possess the authority to adopt a bill and keep regime for interstate access, arguing that the Commission's adoption of bill and keep for interstate access charges would violate Section 254(k)[37] and Section 254(g).[38] However, neither statutory provision places any restrictions on the Commission's ability to adopt bill and keep.[39]

[35] Qwest comments at 45 ("[t]he Commission indisputably has jurisdiction to set intercarrier rates for conventional interstate access traffic.").

[36] BellSouth comments at 18, *citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic,* CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131, released April 27, 2001 at para. 52 ("*ISP Compensation Order").* *See also* SBC comments at 38. *ISP Compensation Order* at paras. 48 and 49.

[37] California comments at 7-8; California contends that adoption of bill and keep from interstate access charges would violate Section 254(k) by forcing the local telephone network to bear an unreasonable share of joint and common costs and because "relatively non-competitive basic service would become a source of subsidy for more competitive services, such as long distance service."

[38] Focal *et al*. comments at 42-43. Focal *et al.* contend that adopting bill and keep for interstate access would lead to subscribers in some states paying more for long distance service because exchange access costs will vary among local exchange companies.

[39] Section 254(k) deals only with intra-carrier subsidies and is intended to prevent a carrier from allocating the joint and common costs of a competitive service to a non-competitive service which uses some of the same facilities. It does not serve to limit the Commission's authority to adopt bill and keep for interstate access charges. Similarly, the adoption of bill and keep for access charges does not violate Section 254(g) because even with such a pricing regime the interexchange carrier would still be charging the same price for its service to differently situated customers as required by Section 254(g).

2. The Commission Has Jurisdiction to Apply Bill and Keep for Intrastate Access Charges

The Commission's jurisdiction to apply bill and keep to intrastate access charges is not as straightforward,[40] but several commenters offer convincing arguments that the Commission nonetheless has jurisdiction over intrastate access charges. The Commission could exercise jurisdiction over intrastate access charges under Section 251(g), which both preserves the access charge regime that existed prior to the 1996 Act and gives the Commission the power to alter the access charge regime.[41] In addition, the Commission may exercise authority over intrastate access charges pursuant to its general rulemaking authority under Section 201(b) to implement Section 251(a)'s "jurisdiction free" requirement for telecommunications carriers to interconnect.[42] Finally, the Commission could exercise jurisdiction over terminating intrastate access charges pursuant to the Section 251(b)(5) reciprocal compensation requirement.[43]

Those commenters that challenge the Commission's jurisdiction offer little support for their position, either stating conclusorily that the Commission has no jurisdiction[44] or claiming simply that the states have traditionally had jurisdiction over intrastate access charges.[45] The Commission has already determined that the Act gives it the means necessary to keep its regulation of exchange and information access current with new technological innovations.[46] As jurisdictional lines blur, it becomes increasingly necessary for the Commission to regulate broadly in order to ensure that sound, pro-competitive regulations are adopted to foster

[40] Qwest comments at 45.

[41] BellSouth comments at 26-28.

[42] BellSouth comments at 26.

[43] SBC comments at 38-41.

[44] *See, e.g.,* WorldCom comments at 17.

[45] Texas comments at 38.

[46] *ISP Compensation Order* at para. 51 ("Section 251(i) together with Section 201, equips the Commission with the tools to ensure that the regulatory environment keeps pace with innovation").

technological innovation. Thus, the prior reach of the traditional state regulatory role over intrastate access charges should not prevent the Commission from setting rules for bill and keep in the intrastate access charge regime.

3. The Commission Has Jurisdiction to Apply Bill and Keep for CMRS Access Charges

If the Commission chooses not to apply bill and keep to all carriers' access charges, it should still implement bill and keep for CMRS access charges. In theory under the current Commission regulations, only CMRS traffic that is inter-MTA should be subject to access charges.[47] However, as detailed below, this theory has not held in practice and CMRS providers have been subject to inequitable treatment with regard to access charges including having to pay access charges on intra-MTA traffic and not be able to collect access charges where a CMRS carrier terminates inter-MTA traffic.[48] In addition, as discussed below, moving CMRS providers from an access charge regime to bill and keep does not raise substantial universal service concerns.

The Commission has the authority to correct these problems for CMRS carriers under the current access charge system by implementing bill and keep for CMRS access charges. The Commission not only has jurisdiction over CMRS-ILEC interconnection subject to access charges under the provisions of the Act discussed above; it also has wide-ranging authority under Sections 332, 201, and 2(b)[49] over the rates and terms of CMRS interconnection, including the application of mutual compensation obligations like bill and keep for interstate and intrastate traffic. The *Iowa Utilities Board* and *Qwest* decisions make it clear that the Commission may

[47] AWS comments at 46-47.

[48] AWS comments at 47-48.

[49] CTIA comments at 5-8; Nextel comments at 3; RTG comments at 5; Triton comments at 3; Verizon Wireless at 7-8; Voicestream comments at 2-4.

use this broad statutory authority to establish and to enforce rules regarding CMRS-ILEC interconnection even in areas where the states were given authority under the 1996 Act. Therefore, even if the Commission concludes it lacks authority under Sections 201 and 251 to implement bill and keep for access for all carriers, it has the authority to implement bill and keep for both interstate and intrastate CMRS access charges.

III. BILL AND KEEP

A. The Commission Should, at a Minimum, Adopt Bill and Keep for CMRS-ILEC Interconnection

Commenters opposed to bill and keep compensation for the exchange of telecommunications traffic have discussed the issue almost exclusively in the context of CLEC-ILEC interconnection. These commenters challenge the Commission's jurisdiction to require bill and keep, dispute the proposition that both the calling and called parties benefit from the call, and raise the specters of arbitrage, unwanted calls and the impact of bill and keep on both end user retail rates and unbundled network element ("UNE") prices. CMRS-ILEC interconnection, however, does not raise any of these issues. Indeed, CMRS and most ILEC commenters agree that bill and keep represents the most economically efficient and appropriate form of reciprocal compensation. Accordingly, the Commission, at a minimum, should adopt bill and keep compensation for the exchange of traffic between ILECs and CMRS providers.

1. Bill and Keep for CMRS-ILEC Interconnection Can Be Adopted As a First Step

Both proponents and opponents of bill and keep cite principled reasons for their positions. The Commission has, however, no doubt observed that, while the arguments have changed little since the Commission first considered this issue in its *Local Competition Order* in 1996, many of the parties making those arguments have changed their positions. ILECs that once advocated measured payments for reciprocal compensation now champion bill and keep, while CLECs that formerly sang the praises of bill and keep now strenuously urge retention of measured compensation. This position shift is largely attributable to two factors: (1) the tremendous growth in the amount of traffic bound for ISPs which requires ILECs to make large reciprocal compensation payments to CLECs; and (2) the need for CLECs to maximize all potential revenue sources in a market where investors are insisting on quick profitability and capital funding is scarce.

Neither of these factors relates to CMRS-ILEC interconnection. CMRS providers generally do not serve ISPs, eliminating the issue of the impact of ISP-bound traffic. CMRS providers also have more developed and mature networks than CLECs, and particularly in light of the ILECs' historic refusal to pay reciprocal compensation for wireless traffic, CMRS providers have not been able to draw on reciprocal compensation as a significant revenue source. CMRS providers, nonetheless, continue to experience the negative effects of the existing, economically inefficient system of measured use compensation. The issues raised by opponents of bill and keep, as well as the practical concerns that may underlie those issues, simply do not apply to CMRS-ILEC interconnection.

2. Both the Calling and Called Parties Benefit from the Call

Commenters opposed to bill and keep dispute the premise of the OPP Papers that both the calling and called parties benefit equally from a call.[50] However, none of these commenters has provided any empirical evidence or other basis to prove that the calling party is the exclusive beneficiary of a telephone call. Instead, various commenters contend that there is no proof that both parties benefit equally,[51] or that the calling party alone has complete information about the

[50] AT&T comments at 23-25; Time Warner comments at 5-7.

[51] *E.g.*, Ad Hoc comments at 5; Focal *et al*. comments at 43-44.

content and corresponding benefit of the call,[52] or that relative incentives and "externalities," rather than simply benefits, must be considered.[53] Thus, these commenters contend, the Commission has an insufficient factual or theoretical basis for altering the historic assumption that the calling party "causes," or is otherwise responsible for, the costs of the call.[54]

These comments do not reflect the reality of CMRS-ILEC interconnection, whatever their applicability to CLEC-ILEC interconnection. As AWS explained in its initial comments, the purpose and intended use of a telephone call is to facilitate communication between two or more parties. Examples can always be found to show that individual calls are unwanted or otherwise initiated for the sole benefit of the calling party, but no one can legitimately dispute that these calls represent the exception, rather than the rule. Indeed, if telecommunications were not mutually beneficial to both the calling and called parties, the Commission and state commissions' efforts to maximize individual telephone subscribership and to foster universal service would not have been justified.

The assumption of asymmetrical information between the calling and called parties also fails to withstand scrutiny, much less justify requiring the calling party to bear all costs of the call. Telecommunications involves an interactive process, not the static delivery of information. Nothing prevents a called party from supplementing or expanding the scope of the subjects the calling party intended to discuss or otherwise providing information to the calling party. Indeed, the calling party may be returning the called party's call or seeking information that is within the

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[52] Maryland comments at 24-26; NTCA comments at 16.

[53] Time Warner comments at 6; AT&T comments at 22-23; National Association of State Utility Consumer Advocates ("NASUCA") comments at 22-23.

[54] Cost causation is of course a traditional subject of inquiry for the Commission. "Causation" in such circumstances is similar to the legal distinction between "but for" and "proximate" causation. Here, "but for" causation may be attributed to the calling party (*i.e.*, but for that party picking up the phone and dialing, no service provider would incur any costs), but either – or, more likely, both – parties may have proximately caused those costs

exclusive possession of the called party and thus unable to assess the relative benefits of the call until it is completed.[55] Again, the nature of telephonic communications is to enable *exchanges* of information, not simply to relay data to a passive recipient.

Finally, "incentives" and "externalities" do not justify continuing a requirement that the calling party pays the entire costs of a telephone call. The analogy to transmission of messages through the postal system typifies the misconceptions.[56] According to this analogy, the person sending a letter through the mail pays the postage to deliver the letter to the recipient, and individuals can change this default through their specific dealings (*e.g.*, requiring the recipient to provide the sender with a stamped, self-addressed envelope or otherwise to pay the applicable postage), just as telephone end users placing a call pay for that call unless they change the calling party network pays ("CPNP") default (*e.g.*, through collect calls and calls to "toll free" numbers). The flaw in this analogy is that the postal system, unlike the telephone network, is a static medium of information transmission that enables only one-way communication.[57] The more appropriate analogy to voice telecommunications is digital subscriber line ("DSL") or other high-speed data transmission services. Subscribers of such services pay a flat, monthly fee for unlimited access to the data network without regard to whether the subscriber is the sending (calling) or receiving (called) party. Implicit in this payment scheme is the recognition that the end user customer benefits – and pays the costs associated with – both sending and receiving information.

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to be incurred (*i.e.*, provided the reason or ultimate impetus motivating the calling party's physical act of initiating the call).

[55] Such calls would include citizens' calls to government agencies seeking information on various public services and programs or consumer calls to businesses to determine price, availability, and other information about products and services.

[56] *See* Allegiance comments at 21.

[57] Indeed, a telephone call is more analogous to an *exchange* of correspondence through the mail, in which each participant sends (and pays the associated postage), as well as receives messages.

The Commission has appropriately proposed that responsibility for the costs of providing a telephonic connection between two parties follow the benefits and be shared equally among the participants to that call. Such an approach recognizes the realities of the 21st century, rather than following the 19th century model of requiring the party initiating the contact to pay the entire costs of that contact. At least in the context of CMRS-ILEC interconnection, the Commission has more than ample basis to conclude that the benefits to the calling and called parties are roughly equal and justify the adoption of bill and keep compensation for the exchange of telecommunications traffic.

3. Bill and Keep Does Not Provide Any Significant Arbitrage Opportunities in the Context of CMRS-ILEC Interconnection

Some commenters contend that adoption of bill and keep would result in arbitrage opportunities, creating an economic incentive for carriers to serve customers with predominantly outbound calling as a way of reducing those carriers' network costs.[58] At least two assumptions are implicit in this argument: (1) carriers incur lower costs to deliver calls to another carrier for termination than those carriers incur to complete the same call on their own network; and (2) carriers, as both a practical and legal matter, can and would limit their customers to those having predominantly outbound calling patterns. Neither of these assumptions is applicable in the context of CMRS-ILEC interconnection.

Both CMRS and landline networks provide telecommunications services, but CMRS providers offer a significantly different product than LECs. Landline service provides telecommunications between fixed geographic locations, while CMRS provides service to a customer regardless of his or her geographic location at the time of the call. The costs a CMRS provider incurs to provide its service are not comparable to the costs a LEC incurs to provide its

[58] *E.g.*, Time Warner comments at 9-11; Allegiance comments at 11-12.

service because the respective services and facilities used to provide those services are so different. A CMRS provider thus cannot shift its call termination network costs to a LEC because landline call termination is generally not a substitute for wireless call termination.

CMRS providers also have no economic incentive or practical ability to target their marketing efforts to customers having predominantly outbound calling patterns. CMRS providers (and ILECs) serve a broad customer base over more mature networks. CMRS providers' financial incentives are related to generating revenues from subscribers, not from other carriers. The nature of CMRS, moreover, simply is not conducive to attracting end user customer groups with outbound calling patterns, such as telemarketing firms or fax messaging companies. As AWS discussed in its initial comments, traffic between CMRS providers and LECs is approaching (and in some cases has achieved) balance, and bill and keep compensation would only facilitate that trend. Accordingly, arbitrage is not a legitimate concern in the context of bill and keep for CMRS-ILEC interconnection.

4. Bill and Keep Will Not Result in More Unwanted Calls between LEC and CMRS Subscribers

Another issue raised by opponents of bill and keep is unwanted calls. Some commenters assert that because the calling party is not solely responsible for the costs of the call under bill and keep, parties will have an economic incentive to place more calls that benefit only the calling party, including unwanted calls from telemarketers.[59]

End user rates are based on average costs and, for the vast majority of end users, are not tailored to an individual end user's calling patterns, particularly in states that have flat-rated local calling. Adoption of bill and keep thus will have no impact on end user customer calling patterns – including the level of telemarketing and other unwanted calls – <u>because retail rates</u>

[59] Maryland comments at 27-28; OPUCT comments at 18-19; NTCA comments at 18.

will remain unchanged or will continue to be established without regard to the form of intercarrier reciprocal compensation.

If concerns exist that a company will attempt to reduce its costs under bill and keep by manipulating end user rates to encourage more outbound calling to other carriers' customers, AWS explained in the previous section that such arbitrage is not an issue in CMRS-ILEC interconnection. Adoption of bill and keep for CMRS-ILEC interconnection thus will not result in an increase in unwanted calls or other inefficient uses of telecommunications network resources.

5. Adoption of Bill and Keep for CMRS-ILEC Interconnection Will Not Result in End User Rate Increases

Opponents of bill and keep, and even some commenters who support bill and keep, argue that the result will be an increase or "restructuring" of end user rates as companies seek to recover their costs exclusively from their end user customers.[60] None of these commenters has provided any factual support for this claim. Such a contention is particularly disingenuous coming from ILECs, which allegedly have paid hundreds of millions of dollars in reciprocal compensation payments to CLECs without any corresponding retail rate increases or restructuring. Indeed, some ILECs have recently *reduced* retail rates, despite the alleged increase in reciprocal compensation payments to CLECs.[61] If the ILECs' prior claims are to be believed, adoption of bill and keep should in fact lessen any pressure to restructure retail rates allegedly due to intercarrier reciprocal compensation payments.

CMRS providers have historically operated with little or no reciprocal compensation and make no claim that bill and keep will result in any increase in the rates they charge their

[60] *See* SBC comments at 31; Bell South comments at 15; Qwest comments at 33.

subscribers. ILECs' retail rates, on the other hand, are established under regulatory regimes that incorporate a variety of implicit cross-subsidies. The ILECs have presented no evidence that reciprocal compensation has any impact on end user rates, much less that adoption of bill and keep will somehow prevent them from earning their authorized rate of return or a reasonable return under price cap regulation.

B. Operation of Bill and Keep

1. The Commission Should Continue to Require Only One POI per LATA

Most commenters either support or do not oppose the concept of requiring only one point of interconnection ("POI") per LATA. The primary exception is SBC, which proposes a POI in each ILEC local calling area.[62] The Commission previously rejected this approach[63] and should do so again. As is discussed more fully below, [64] particularly in the wireless context, where the local calling area is the MTA, SBC's proposal is economically inefficient and attempts to shift the costs of interconnection to competitors.

2. Each Interconnecting Carrier Should Bear Equal Responsibility for the Costs of the Transport Facilities Used for Interconnection

Most commenters did not even address how transport should be compensated in a bill and keep environment. Qwest was the only commenter other than AWS to address this issue extensively, but Qwest recommends that the Commission adopt only general principles and seek

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[61] *See, e.g.*, Washington Utils. & Transp. Comm'n Docket Nos. UT-981367, UT-990672 & UT-991164, Fourth Supp. Order Approving and Adopting Settlement Agreement (Dec. 16, 1999) (approving settlement in which Verizon agreed to $30 million in net annual revenue reductions by July 1, 2001).

[62] SBC comments at 18.

[63] *In the Matter of Application by SBC Communications, Inc., to Provide In-Region InterLATA Services in Texas*, CC Docket No.00-65, Memorandum Opinion and Order, FCC 00-238, 15 FCC Rcd 18354 (2000) at para. 78, n.174.

[64] *Infra* at Section V.B.

additional comment on implementation of those principles.[65] No such redundant process is necessary, at least in the context of CMRS-ILEC interconnection.

The principle the Commission should adopt is that each interconnecting carrier should be responsible for paying an equal share of the efficient, forward-looking costs to construct and maintain the transport facilities over which the carriers exchange telecommunications traffic. In the context of CMRS-ILEC interconnection, those facilities, at a minimum, should be constructed between the CMRS provider's mobile switching center ("MSC") and the closest LEC tandem or tandem-equivalent switch. Additional interconnection facilities, such as direct connections to the LEC end office, may be required only when traffic volumes justify such dedicated facilities, *i.e.*, when the traffic to be exchanged over any such facilities would reach the level of a DS1 circuit at the peak busy hour. Regardless of which carrier provisions the facilities, both carriers should share the costs of those facilities equally, just as bill and keep effectively requires each carrier to pay one half of the origination and termination costs of all of the traffic exchanged over those facilities.

Qwest suggests a dichotomy between a physical POI (where the two networks physically meet) and a financial POI (where one carrier's financial obligation ends and the other carrier's financial obligation begins). The ILECs have created that dichotomy and used it to shift most of the costs of interconnection to the other interconnecting carrier. In CMRS-ILEC interconnection, for example, the ILEC provides the two-way transport facilities between its central office and the MSC in the vast majority of circumstances. ILECs then have established the financial POI at the ILEC tandem or end office and required the CMRS provider to pay the costs of the facilities constructed to that POI, *i.e.*, to the ILEC switch, leaving few, if any, costs

[65] Qwest comments at 5 and 23-31.

to share. Qwest's proposal to equate the "physical" POI and the "financial" POI, at least in the context of CMRS-ILEC interconnection, is nothing more than a proposal to shift the costs of interconnection facilities to the CMRS provider.

There should be no "financial" POI. The POI is the physical point where interconnecting carriers' facilities meet, which is relevant to engineering and network management, but should not bear any relationship to the carriers' respective financial obligations. Whether the transport facilities that connect two carriers' switches is constructed, in whole or in part, by one or both carriers, each carrier should be responsible for one half of the costs. Such a default mechanism facilitates efficient network interconnection, is simple to administer, and is consistent with the economic justifications for adoption of bill and keep reciprocal compensation. Contrary to Qwest's arguments for delay, no further comment is needed for the Commission to adopt this proposal.

IV. BILL AND KEEP FOR ACCESS

A. The Record Supports Bill and Keep for Access Charges

There is ample support in the record for bill and keep for traffic subject to access charges. Most wireless carriers (including AWS), some ILECs, and some CLECs support bill and keep for a unified form of intercarrier compensation and encourage the Commission to adopt bill and keep for traffic currently subject to access charges. These parties also agree that bill and keep is the most efficient way to address distortions caused by the current access charge regime, *i.e.*, terminating access monopolies and arbitrage by Internet Protocol ("IP") telephony providers.

The arguments that the rural ILECs, some CLECs and the states offer in opposition to bill and keep for traffic subject to access charges are without merit. Opponents claim that bill and keep will create new arbitrage opportunities or market distortions, lead to increased end user rates and adversely impact universal service. It is impossible to completely eliminate all arbitrage opportunities under any intercarrier compensation regime, but AWS believes that a bill and keep system, in conjunction with a system in which carriers equally split costs to the point of interconnection, is most pro-competitive and efficient. In any event, the Commission should continue to reform universal service in the appropriate proceeding so that the transition to bill and keep will not harm universal service or increase end user rates.

1. Bill and Keep Eliminates Many of the Problems Which Exist under the Current Access Charge System

Bill and keep would eliminate a number of problems with the current access charge system, including: (i) the terminating access problem, (ii) potential price squeeze opportunities, and (iii) IP telephony arbitrage opportunities.[66] By eliminating these distortions, a bill and keep regime for access charges encourages both efficient network use and efficient network construction.

Under the CPNP regime, the terminating network carrier has an incentive to charge excessive rates and regulators often must regulate the rates for all carriers regardless of their size or market share. A manifestation of the terminating access problem under the CPNP access charge regime is the Commission's recent order subjecting CLEC access charges to general rate regulation.[67] In contrast, bill and keep forces the terminating carrier to recover the termination charge from its own end user instead of another carrier, which reduces or eliminates the incentive to charge over-compensatory prices for termination.[68]

Under the CPNP access charge regime, an ILEC which also provides interexchange service could impose a price squeeze on competitive interexchange carriers ("IXCs").[69] Under

[66] Bill and keep will also eliminate incentives to build inefficient bypass networks and distortions in long distance demand due to above cost access charges. *See*, *e.g.*, Cable and Wireless comments at 7 and 9.

[67] Qwest comments at 11.

[68] Cable & Wireless comments at 9; BellSouth comments at 9-11; and SBC comments at 50.

[69] Cable & Wireless comments at 7.

bill and keep for access charges, however, the ILEC would recover only the costs of providing terminating or originating access services from its end users – not a mandated above-cost access charge.

Finally, bill and keep would eliminate the arbitrage opportunity created by not applying access charges to long distance service provided over the Internet.[70] Because every minute is treated the same under bill and keep, services like long distance traffic carried over the internet would have to survive based on cost and service quality, not because of an artificial regulatory advantage.

2. Commenter Concerns over Increased End User Rates Are Likely Overstated

A widely raised concern among commenters is that, by eliminating access charges, end user rates will increase significantly.[71] Because the Commission already has undertaken some access charge reforms, however, the revenue shortfalls cited by these commenters are likely not to be as dire as they contend.[72]

Indeed, the Commission has made significant progress in eliminating the implicit subsidies in access charges and replacing them with explicit subsidies – including most recently in the CALLS and MAG orders.[73] After implicit subsidies contained in access charges are

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[70] WorldCom comments at 11 and SBC comments at 50.

[71] *See*, *e.g.*, NRTA and OPATSCO comments at 10-12; Missouri Small Telephone Company Group comments at 6 and 14; Michigan Exchange Carriers Assn. comments at 37-38; CPUC comments at 7; and Alaska comments at 2.

[72] Missouri Small Telephone Company Group comments at 6 (member companies receive over 50% of their revenue on average from intercarrier compensation); Michigan Exchange Carriers Assn. comments at 37 and 38 (members receive 70 to 80% of their revenue from toll access charges). California comments at 7; Alaska comments at 2.

[73] *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, and Federal-State Joint Board On Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193, released May 31, 2000 at paras. 31 and 32 ("*CALLS Order*") (adopting rules for large price cap LECs). The Commission recently adopted similar rules for rural rate of return LECs based on its consideration of the Multi-Association Group ("MAG")

converted to explicit subsidies, only the actual costs of termination and origination are left to recover from the end users. For most larger LECs with great economies of scale, these costs are likely very low. Smaller and rural LECs, whose costs structures are higher, may require additional universal service funding in order to ensure that their end user rates remain affordable.[74] While local end users rates may increase somewhat when the actual costs of origination are recovered from them, this increase would be tempered by reduced long distance calling charges.

3. If The Commission Elects Not to Apply Bill and Keep to Access for All Carriers, It Should Still Apply Bill and Keep to CMRS Access

If the Commission chooses to apply bill and keep gradually or in phases, it should first apply bill and keep to CMRS access. Both intra-MTA and inter-MTA CMRS traffic has been subject to disparate access charge treatment. As detailed in the opening comments, some carriers have imposed access charges on CMRS for intra-MTA calls, despite Commission mandates that this traffic should be treated as local traffic.[75] Further, inter-MTA traffic is also subject to a major inequity and asymmetry: the CMRS provider receives no compensation, but pays access charges, while other carriers receive access charges for the termination of such traffic, or otherwise benefit by transferring traffic to the CMRS provider.[76]

In addition, most of the hurdles raised against bill and keep for access charges generally do not apply to CMRS traffic. As discussed above, the Commission has more wide-ranging authority with respect to CMRS providers under Section 332, and unquestionably has the

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petition. The MAGs order also seeks to push access charges towards cost based levels and to replace the implicit universal service support in the access charges with explicit support. Press Release: FCC Adopts Order to Reform Interstate Access Charge System for Rural Carriers, October 11, 2001, http://www.fcc.gov/Bureaus/ Common_Carrier/News_Releases/2001/ nrcc0140.html.

[74] Level 3 comments at 32 and Qwest comments at 35-36.

[75] AWS comments at 45-46 and Nextel comments at 10-12.

[76] AWS Comments at 46-47.

authority to apply bill and keep to both CMRS interstate and intrastate traffic. Also, concerns about the loss of access charge revenues or universal support from CMRS traffic should be minimal. CMRS local calling areas are substantially larger than wireline calling areas and the percentage of CMRS versus wireline minutes is relatively small.[77] Thus, CMRS access charges are not a major source of remaining universal service subsidies compared to wireline access charges. In short, the Commission could adopt bill and keep for CMRS access charges as a first step toward a more rational unified regime.

V. REFORMING THE CPNP REGIME

Although AWS strongly supports the Commission's adoption of a bill and keep regime for all forms of intercarrier compensation, in the event that the Commission determines to maintain the existing CPNP system, AWS agrees with various commenters that the Commission must reaffirm certain rules as well as modify or adopt new rules to prevent current anti-competitive and inequitable practices of ILECs.

A. The Commission Should Address ILEC Abuses Regarding Transit Traffic and Costs of Physical Interconnection

The record demonstrates that ILECs, particularly rural ILECs, have abused their monopoly power in various instances by, among other things, charging non-TELRIC rates for terminating local traffic; requiring carriers to interconnect directly even to pass *de minimis* amounts of traffic; requiring carriers to pay for the costs of transiting both originating and terminating calls; and requiring interconnecting carriers to pay excessive charges for the costs of physical interconnection. Not only are these abuses contrary to the Commission's rules, they

[77] Estimated wireless minutes of use ("MOU") per month ranged from 245-335 MOU per month for mid-2000. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 01-192, Sixth Report (2001) at 22. Average wireline MOUs are estimated at 65 MOUs per day or approximately 1950 MOUs per month. FCC Trends in Telephone Service, August 2001 at 11-1 (available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend801.pdf).

impose enormous transaction and administrative costs for little reason, and have particularly burdened CMRS providers.[78] The Commission should expressly forbid these anti-competitive and illegal practices of rural ILECs by adopting new rules and/or reaffirming existing rules.

Almost all CMRS providers commenting on the NPRM described how rural LECs have improperly imposed excessive or access-like rates on them even where the traffic is intra-MTA.[79] The Commission should reaffirm that CMRS traffic that originates and terminates within an MTA – even traffic that is passed through a transiting carrier – is not subject to access charges,[80] but is instead subject to reciprocal compensation. This is consistent with the Commission's long established determination that the MTA is the local calling area for landline-to-CMRS traffic and is the only equitable result,[81] given that CMRS providers do not collect access payments from other carriers for any traffic the CMRS provider terminates.[82]

These same commenters also complain that rural ILECs in some cases have required direct interconnection, even when the amount of traffic exchanged is *de minimis*.[83] Sprint correctly points out that such demands for direct interconnection are anti-competitive, wasteful

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[78] In fact, AWS was recently sued by a rural carrier before a state commission for less than six dollars in historical reciprocal compensation fees.

[79] *See, e.g.*, Nextel comments at 10-12 (reporting that rural ILECs have filed unilateral state tariffs for terminating wireless traffic, which tariffs provide for per minute rates from 5.06 cents to 7.44 cents per minute); Verizon Wireless comments at 40, CTIA comments at 45-46; Triton comments at 12.

[80] *See, e.g.*, AWS comments at 51; CTIA comments at 45-46; Verizon Wireless comments at 44.

[81] *See, e.g.,* Verizon Wireless comments at 44-45 (noting that the Commission recently reiterated in the *ISP Remand Order* that the MTA constitutes the local calling area for CMRS originated and terminated traffic); AWS comments at 51.

[82] *See*, *supra*, text at Section IV.A.3; Voicestream comments at 17 (noting that it would be unreasonably discriminatory in contravention of Section 202 for IXCs not to pay CMRS providers for terminating IXC traffic while they pay LECs for the same function).

[83] *See* Nextel comments at 27; Triton comments at 13. *See also Matter of Sprint Spectrum, L.P., d/b/a Sprint PCS*, Request for an Order Directing Brandenburg Telephone Company to Provide Interconnection on Reasonable and Nondiscriminatory Terms, Federal Communications Commission (filed Oct.11, 2001) (alleging that rural carrier Brandenburg refuses among other things to permit Sprint PCS to use indirect interconnection where traffic volumes are de minimis, as the Act permits).

of carrier resources, and flatly inconsistent with the Act and the Commission's rules.[84] If the Commission maintains a CPNP system, therefore, it should include language in its order affirming rural ILECs' indirect interconnection obligations. In addition, the Commission should create an exception to its reciprocal compensation rules for *de minimis* amounts of traffic where the time and expense to negotiate such reciprocal compensation arrangements far outweighs any benefit.[85]

Moreover, the record indicates that ILECs are in some cases imposing excessive costs on carriers for transport, termination, or interconnection facilities.[86] For example, Triton and PCIA asserts that in some cases the ILECs unreasonably refuse to pay transiting costs for either originated or terminated calls.[87] This means that the CMRS provider ends up bearing the transiting costs in both directions – a result which is prohibited by the FCC's rules and case law.[88] AWS' proposal that the transiting carrier charge one-half of its TELRIC-based costs of transport to the originating carrier, and one-half of those costs to the terminating carrier[89] ensures that transiting carriers are properly compensated while the originating and terminating carriers equally share the costs of the exchanged call.[90] The Commission should accordingly adopt a rule

[84] Sprint comments at 33-34; s*ee* 47 U.S.C. § 251(a)(1) (requiring carriers to interconnect directly or indirectly with facilities and equipment of other telecommunications carriers) and *Local Competition Order* at para. 997.

[85] *See, supra*, fn. 78.

[86] *See, e.g.*, Triton comments at 14.

[87] Triton comments at 13-14; PCIA comments at 22; *see also* Allied comments at 12.

[88] *See* Triton comments at 12-14, *citing* Letter from A. Richard Metzger, Chief, Common Carrier Bureau, to Keith Davis, Southwestern Bell Telephone, DA 97-2726, 13 FCC Rcd 184 (1997); *see also* PCIA comments at 21-22; *Qwest v. FCC*, 252 F.3d 462, 464 (D.C. Cir. 2001) (upholding the Commission's interpretation of 47 CFR 51.703(b) as barring charges for facilities used to deliver LEC-originated traffic).

[89] *See* AWS comments at 44; *supra* text at Section III.B.2.

[90] *See* 47 C.F.R. § 51.701(e). *See also* PCIA comments at 22 (asserting that the Commission should reaffirm that originating carriers are responsible for the costs of transit across other networks); Triton comments at 14 (noting that transiting charges should be shared by carriers that use the transiting carrier's services, consistent with the Commission's requirement that a carrier be compensated for the transport and termination of local traffic originating on another carrier's network).

that interconnecting carriers equally share the costs of physical interconnection facilities as well as the costs of transport, and that a transiting carrier may apportion half of its costs of transport to each originating and terminating carrier.

B. The Commission Should Reaffirm the Single POI per LATA Rule and Require Carriers to Split the Costs of Transport

The record overwhelmingly supports the Commission's reaffirmation of its single POI per LATA rule with nearly all carriers noting that such a rule is the most pro-competitive and efficient,[91] while only a few ILECs assert that a competitive carrier should have a POI within each local exchange.[92] AWS urges the Commission to take the following actions regarding its rules on POIs:[93] (i) retain existing rules requiring that an ILEC permit a requesting telecommunications carrier to interconnect at any technically feasible point within a LATA, including a single POI within a LATA; (ii) modify existing rules to require two-way trunking to the POI, with each carrier bearing half the costs of transport and interconnection to maximize parties' incentives for efficient network interconnection; and (iii) require originating carriers to deliver traffic to the POI designated by the terminating carrier, where there is more than a single POI within a LATA.[94]

The Commission should reject as anti-competitive SBC's proposal that interconnecting carriers be required to interconnect at a POI within each local exchange or that the ILEC be compensated for the additional cost of transporting traffic beyond the local exchange area to a

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[91] *See, e.g.*, America Online comments at 2; CTIA comments at 32; AT&T comments at 55-57; BellSouth comments at 15; Cablevision Lightpath comments at 3-6; Focal *et al.* comments at 55-56; Sprint comments at 3.

[92] *See, e.g.*, Michigan Exchange Carriers comments at 43-44; SBC comments at 18 (arguing for compensation for traffic transported beyond SBC's local calling area).

[93] AWS proposes these rules for interconnection under either a bill and keep or CPNP regime *See, supra,* text at Section III.B.2.

[94] AWS comments at 56.

single POI in a LATA.[95] The Commission has long held that requiring a carrier to establish multiple POIs within a LATA creates barriers to entry and imposes significantly more costs on the competitive entrant than are imposed on the incumbent.[96] Further, as the record demonstrates, requiring carriers to establish more than one POI within a LATA would result in redundant and inefficient networks.[97] Finally, there is no technological basis for requiring carriers to interconnect in each local calling area given new technologies that permit carriers to serve large and multiple geographic areas with one switch.[98]

Moreover, AWS believes that its proposal for splitting costs between interconnecting carriers' networks addresses concerns of some ILECs that they should be compensated for carrying traffic to a POI where the traffic originates outside of the local calling area in which the POI is located.[99] AWS' "cost-splitting" proposal is more administratively simple and efficient than Sprint's proposal of allocating costs between the ILEC and the other connecting carrier, depending on the distance between the POI, the originating end office, and the level of traffic volumes.[100] AWS' proposal also provides the best incentives for *both parties* to negotiate efficient POIs and is more pro-competitive than SBC's proposal.[101] In the alternative, if the

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[95] SBC comments at 18-19.

[96] *See* 47 C.F.R. § 251(c)(2)(B); *supra*, fn.63; AWS comments at 40; AT&T comments at 9-10.

[97] *See, e.g.*, Time Warner comments at 14; Cbeyond comments at 9-10; Focal *et al.* comments at 55-56; Allegiance comments at 26-30.

[98] *See* Focal *et al.* comments at 55-56 (noting that new technologies allow carriers to serve multiple geographic areas with one switch). In fact, requiring carriers to interconnect at multiple POIs would effectively penalize these carriers for their efficient networks.

[99] *See, e.g.* CenturyTel comments at 31-32 (expressing concern that, under a bill and keep regime, one carrier will bear all the costs of interconnection and thus requests that the Commission require carriers to share the costs of interconnection); SBC comments at 18-19; Sprint comments at 31-32.

[100] Specifically, Sprint proposes that, if the call originates outside the local calling area where the POI is located, the ILEC is responsible for the costs of transport if the total traffic volume between the POI and the originating end office is less than 8.9 million minutes (one DS3) per month, or the distance between the POI and the originating end office is less than 20 miles.

[101] SBC asserts ILECs should be compensated for traffic to a POI outside the local calling area from which the call originates.

Commission declines to adopt AWS' proposed rule for splitting the costs of interconnection, the Commission should retain its current rule requiring the originating carrier to bear 100% of the transport costs.[102]

Finally, AWS reiterates its recommendation that the Commission require the originating carrier to deliver traffic to the designated point chosen by the terminating carrier, where there is more than one POI in a LATA, so that an originating carrier does not route traffic inefficiently or unexpectedly burden the terminating carrier's network.

C. At a Minimum the Commission Should Continue to Permit Current Use of Virtual NXXs for CMRS Providers

Most parties, with the exception of some ILECs, urge the Commission to allow use of virtual NXXs without requiring additional compensation for use of these codes.[103] CMRS providers, CLECs, IXCs, and other parties recommend that the Commission affirm that virtual NXXs should be allowed because, among other things, virtual NXXs benefit businesses and consumers; ILECs have used virtual NXXs for years; and the use of virtual NXXs does not affect the originating carrier's switching and transport obligation.[104] Although ILECs claim that CLECs are unfairly using virtual NXXs to aggregate traffic to certain types of customers and to avoid payment of toll charges,[105] the record demonstrates that this is not the case.[106]

To the extent, however, that the Commission may adopt certain compensation rules for use of virtual NXXs, AWS urges the Commission to specify that such rules adopted for landline

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[102] *See* 47 C.F.R. § 51.703(b)(LECs may not assess charges on any other telecommunications carrier for local telecommunications traffic originating on the LEC's network).

[103] *See* AT&T comments at 10; AOL comments at 7; Texas comments at 118; Allegiance comments at 56.

[104] *See, e.g.*, KMC comments at 6-7; Focal *et al.* comments at 57-58; Texas comments at 118; AOL comments at 6.

[105] *See* SBC comments at 17-18; BellSouth comments at 7-8; Michigan Exchange Carriers comments at 45.

[106] *See, e.g.*, Focal *et al*. comments at 57-59; Allegiance comments at 53 (noting that the FCC has established compensation rates for the ISP traffic in its *ISP Remand Order*); Texas comments at 118 (noting that if

carriers *would not apply* to the CMRS industry, due to the unique and mobile nature of CMRS calls.[107] As emphasized by various wireless carriers, all wireless NXXs are essentially virtual because CMRS customers do not remain in single geographic location.[108] Verizon Wireless also notes, as did AWS, that CMRS providers "most often have facilities and customers in close proximity to these virtual codes," and have not used virtual NXXs in order to avoid toll charges.[109] Finally, the Commission can address concerns about calls being transported beyond the local exchange area to a single POI within a LATA[110] by establishing a regime in which carriers split the cost of transport equally between networks, as AWS proposes. This allocation of costs strikes the appropriate balance between carriers' networks and provides further incentives for both parties to negotiate efficient POIs.

D. The Commission Should Retain TELRIC-Requirements with a Presumption of Symmetrical Rates (Subject to Competing Carriers' Demonstration of Higher Costs) As Well As the Tandem-Switch Rule

Most commenters advocate that the Commission retain its forward-looking cost methodology along with a presumption of symmetrical rates because such rules are pro-competitive and technologically neutral.[111] Although some rural ILECs argue that the Commission should <u>require</u> each carrier to base rates on its own TELRIC studies,[112] such a proposal would unfairly raise the costs of entry for competitive and wireless carriers by requiring

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virtual NXXs were prohibited, customers would simply not make the toll call to the ISP, and thus, ILEC claims of lost toll charges are unfounded).

[107] CTIA comments at 47-49; AWS comments at 57-58; Verizon Wireless comments at 30-33.

[108] Allied comments at 16; AWS comments at 57-58; Verizon Wireless comments at 32-33.

[109] Verizon comments at 31; *See also* AWS comments at 58. As AWS also observed in its opening comments, the MTA-local calling area for wireless customers is significantly larger than the wireline local calling area, and the toll revenues lost by the ILEC may be insignificant in the wireless context. AWS comments at 45, n.78.

[110] SBC comments at 18.

[111] *See* AWS comments at 52; Cable and Wireless comments at 21-22; CompTel comments at 18-19; Time Warner comments at 31.

[112] *See, e.g.*, Michigan Exchange Carriers comments at 40-43.

them to expend time and resources on cost studies that have no other use. Instead, the Commission should reaffirm its current rule that *presumes* symmetry with the ILEC's TELRIC-based rates, while allowing new entrants the opportunity to demonstrate that their individual network costs are higher than the ILEC's.[113]

The commenters (without apparent dispute from the ILECs) similarly support the Commission's reaffirmation of the rule that carriers using new technologies that serve a geographic area equivalent to the ILEC's tandem-switch be compensated at the ILEC's tandem-switch rate,[114] as was recently held by the Ninth Circuit.[115] The Commission should also adopt Verizon Wireless' proposal to establish a presumption that the MSC is equivalent to the ILEC's tandem for purposes of obtaining equivalent compensation, as wireless MSCs typically serve geographic areas comparable to or larger than the areas served by the ILEC's tandem.[116]

E. CMRS Providers Have the Same Rights That CLECs Have under Sections 251 and 252 to Obtain UNEs, Service Quality, and Interconnection from ILECs on Nondiscriminatory Rates, Terms and Conditions

Various CMRS providers have provided substantial evidence that the current CPNP system permits ILECs to engage in recalcitrant behavior by, among other things, refusing to provide CMRS providers with nondiscriminatory access to UNEs, service quality, or interconnection, and by imposing excessive charges unilaterally through tariffs. As Nextel notes, "ILECs still maintain vastly superior bargaining power because they have the network to which every other carrier must interconnect."[117]

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[113] *See also* PCIA comments at 20; RTG comments at 3-4.

[114] AWS comments at 54-55; AT&T comments at 10; Cablevision Lightpath comments at 8-12; PCIA comments at 27-28; Time Warner comments at 32-33. *See* 47 C.F.R. § 51.711.

[115] *U.S. West Communications, Inc. v. Washington Utilities and Transp. Comm'n*, No.98-36013, 2001 U.S. App. LEXIS 14836 (9th Cir. July 3, 2001).

[116] *See* Verizon Wireless comments at 37-38.

[117] Nextel comments at 18-19.

AWS reiterates that it has experienced considerable resistance and refusal from ILECs to recognize that CMRS providers have the same rights as CLECs under Section 252(i) to adopt in part or in full, provisions of other carriers' interconnection agreements.[118] Other carriers note that ILECs have often refused to provide UNEs or interconnection based on forward-looking costs, and/or that state commissions have been unwilling to enforce the Commission's rules against the ILECs in these circumstances.[119] The Commission should expressly reaffirm that CMRS providers have the same rights as CLECs and other carriers to nondiscriminatory access to UNEs, interconnection agreements, and service quality.

A number of parties have raised another interconnection-related problem regarding ILECs' reference to, and incorporation of, tariffed services in CMRS interconnection agreements – for which the ILECs often charge excessive rates. For example, Nextel notes that one ILEC imposes significant tariff charges for Signaling System 7 ("SS7") functions by referring to its FCC tariff.[120] Nextel argues that because these functions are reciprocally generated and exchanged, the ILEC should not be permitted to impose charges unilaterally on the CMRS provider.[121] Accordingly, Nextel supports a rule establishing a presumption that when both carriers provide a particular service support functionality, both carriers should simply exchange such functions on a bill and keep basis. Verizon Wireless also complains about the unfairness of this practice, arguing that "SS7 arrangements should be subject to the Commission's rules on reciprocal compensation," or bill and keep if ordered.[122] AWS agrees that such practices result in inequitable outcomes and serve to deter competitors from competing equally with ILECs. The

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[118] *See* AWS comments at 60.

[119] Triton comments at 15; PCIA comments at 37-38; Nextel comments at 29-31 (regarding unilateral tariffs filed by ILECs).

[120] Nextel comments at 30.

[121] Nextel comments at 30.

Commission thus should either hold that these reciprocally generated services are subject to reciprocal compensation or bill and keep, if it is adopted by the Commission in this proceeding.

VI. CONCLUSION

As the record overwhelmingly demonstrates, a bill and keep system would eliminate current inefficiencies and inequities in the CPNP system. Moreover, bill and keep promotes competition, a vital goal of which the Commission should not lose sight. AWS urges the Commission to adopt bill and keep for all intercarrier compensation, or, at a minimum for CMRS traffic, in light of the particular problems that CMRS providers have experienced under the current regime. Finally, if the Commission declines to adopt bill and keep, AWS urges the Commission to adopt and/or reaffirm certain rules that are necessary to ensure basic compliance with the Act, as well as an efficient and pro-competitive marketplace for all carriers, including CMRS providers.

Respectfully submitted,

AT&T Wireless Services, Inc.

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Douglas I. Brandon
Vice President – Legal and External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W., 4th Floor
Washington, DC 20036
Tel. (202) 223-9222

Daniel M. Waggoner
Suzanne Toller
Gregory Kopta
Jane Whang
Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101
Tel.: (206) 622-3150
Fax: (206) 628-7699

Attorneys for AT&T Wireless Services, Inc.

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[122] Verizon Wireless comments at 34.